

PT 96-21
Tax Type: PROPERTY TAX
Issue: Charitable Ownership/Use

STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
SPRINGFIELD, ILLINOIS

THE CARNEGIE PRESERVATION)		
PROJECT, INC.)		
Applicant)		
)	Docket #	94-49-450
v.)		
)	Parcel Index	#08-21-420-017
THE DEPARTMENT OF REVENUE)		
OF THE STATE OF ILLINOIS)		

RECOMMENDATION FOR DISPOSITION

Appearances: Mr. Douglas W. Stiles appeared on behalf of The Carnegie Preservation Project, Inc.

Synopsis:

The hearing in this matter was held at 100 West Randolph Street, Chicago, Illinois, on January 22, 1996, to determine whether or not Lake County Parcel No. 08-21-420-017 and the building thereon should be exempt from real estate tax for the 1994 assessment year.

Mr. Wayne A. Munn, president of The Carnegie Preservation Project, Inc. (hereinafter referred to as the "Applicant"), was present and testified at the hearing on behalf of the applicant.

The issues in this matter include first, whether the applicant owned the parcel here in issue and the building thereon during the 1994 assessment year. The second issue is whether the applicant is a charitable organization. The final issue is whether this parcel and the building thereon were either in the process of adaptation for charitable use or actually used for charitable purposes during the 1994 assessment year. Following the submission of all of the evidence and a review of the record, it is determined that the applicant

owned this parcel during the entire 1994 assessment year. It is also determined that the applicant is not a charitable organization. Finally it is determined that this parcel and the building thereon were neither in the process of adaptation for charitable use nor actually used for charitable purposes during the 1994 assessment year.

Findings of Fact:

1. The position of the Illinois Department of Revenue (hereinafter referred to as the "Department") in this matter, namely that the parcel here in issued did not qualify for exemption during the 1994 assessment year, was established by the admission in evidence of Department's Exhibits 1 through 5A.

2. On January 16, 1995, the Lake County Board of Review transmitted an Application for Property Tax Exemption To Board of Review concerning this parcel for the 1994 assessment year to the Department. (Dept. Ex. No. 1)

3. On September 21, 1995, the Department notified the applicant that it was denying the exemption of this parcel for the 1994 assessment year. (Dept. Ex. No. 2)

4. By a letter dated September 27, 1995, the attorney for the applicant requested a formal hearing in this matter. (Dept. Ex. No. 3)

5. The hearing held in this matter on January 22, 1996, was held pursuant to that request.

6. The applicant was incorporated on April 7, 1992, pursuant to the General Not For Profit Corporation Act Of Illinois for the following purposes:

To promote, encourage and further literary, historical, artistic & photographic activities and to preserve the former Waukegan Public Library, commonly known as the Carnegie Library and to use said building for the benefit of the public and the furtherance of said activities: said building being located at Sheridan Road and Washington Street in Waukegan, Illinois. (Dept. Ex. No. 1C)

7. On September 15, 1992, the Articles Of Incorporation of the applicant were amended so that the purpose clause would read as follows:

The corporation is organized exclusively for charitable, educational, religious, or scientific purposes within the meaning of section 501 (c) (3) of the Internal Revenue Code. (Dept. Ex. No. 1E)

8. The purposes of the applicant are also set forth in its by laws, which were approved April 5, 1994, and which provide in part, as follows:

The Carnegie Preservation Project, Inc., was organized to preserve the former Waukegan Public Library located at Sheridan Road and Washington Street, Waukegan, Illinois, commonly known as the Carnegie Library, and to use said building for the benefit of the public, to encourage and promote educational, scientific, literary, historical, artistic and photographic activities. (Dept. Ex. No. 1F)

9. The applicant acquired this parcel from the City of Waukegan by a warranty deed dated October 23, 1993. (Dept. Ex. No. 1A)

10. The parcel here in issue and the building thereon stands at one end of a block long area which is a public park known as Paravonian Park. (Tr. pp. 14 & 15)

11. The local grass roots movement which resulted in the organization of the applicant, began when the City of Waukegan, which was the owner of this parcel and the building thereon, decided to demolish the building. (Tr. p. 16)

12. The building on this parcel ceased to be used as a library around 1970 and it has been vacant since that time. (Tr. p. 41) (Dept. Ex. No. 1AE)

13. From October 23, 1993, to the date of this hearing on January 22, 1996, the applicant has stabilized the building by repairing the roof, reinforcing structural beams, replacing flooring, replacing some windows and boarding up the rest of the windows. (Tr. p. 19)

14. During 1994 the income received by the applicant consisted of donations totaling \$10,974.85, interest income of \$133.63, and sales income of \$774.78. The total income received by the applicant during 1994 was \$11,883.26. (Dept. Ex. No. 1Q)

15. On the date of the hearing in this matter, January 22, 1996, the renovation work on the building had not started. The applicant had approximately \$12,000.00 on hand and an estimated cost of renovation of approximately \$500,000.00. While the applicant has made a number of

applications for grants and contributions, to date none have been received.
(Tr. pp. 31-34)

16. While the applicant is considering several different uses for the building after the renovation is completed, at the time of the hearing no decision had been made as to how the building would be used after renovation.
(Tr. pp. 24-29)

17. The applicant is exempt from Federal Income Tax pursuant to Internal Revenue Code Section 501(c)(3). (Dept. Ex. No. 1W)

18. The applicant is also exempt from Illinois sales and use taxes. (Dept. Ex. No. 1X)

19. The deed to this parcel to the City of Waukegan, dated March 16, 1901, contained the following condition:

This conveyance is made, delivered and accepted upon the express condition that said premises shall not at any time hereafter be used or occupied for any other purpose by the grantee herein or its grantees or assigns than for street, public park or library purposes.
(Dept. Ex. No. 1V)

Conclusions of Law:

Article IX, Section 6, of the Illinois Constitution of 1970, provides in part as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

35 **ILCS** 200/15-65 provides in part as follows:

All property of the following is exempt when actually and exclusively used for charitable or beneficent purposes, and not leased or otherwise used with a view to profit:

- (a) institutions of public charity;
- (b) beneficent and charitable organizations incorporated in any state of the United States....

It is well settled in Illinois, that when a statute purports to grant an exemption from taxation, the fundamental rule of construction is that a tax exemption provision is to be construed strictly against the one who asserts the

claim of exemption. International College of Surgeons v. Brenza, 8 Ill.2d 141 (1956). Whenever doubt arises, it is to be resolved against exemption, and in favor of taxation. People ex rel. Goodman v. University of Illinois Foundation, 388 Ill. 363 (1944). Finally, in ascertaining whether or not a property is statutorily tax exempt, the burden of establishing the right to the exemption is on the one who claims the exemption. MacMurray College v. Wright, 38 Ill.2d 272 (1967).

Based on the foregoing findings of fact, I conclude that the building on this parcel had not been used for more than 24 years and that the applicant owned the parcel here in issue and the building thereon during the entire 1994 assessment year.

While the applicant is both exempt from Federal Income Tax pursuant to Section 501(c)(3) of the Internal Revenue Code and from Illinois sales and use tax, the Illinois Courts have held that exemption from Federal Income Tax and from State sales and use tax is not determinative of whether the subject property is used for charitable purposes. In re Application of Clark v. Marian Park, Inc. 80 Ill.App.3d 1010 (2nd Dist. 1980); and also People ex rel. County Collector v. Hopedale Medical Foundation, 46 Ill.2d 450 (1970).

In the case of Methodist Old Peoples Home v. Korzen, 39 Ill.2d 149 (1968), the Illinois Supreme Court laid down six guidelines to be used in determining whether or not an organization is charitable. Those six guidelines read as follows: (1) the benefits derived are for an indefinite number of persons; (2) the organization has no capital, capital stock, or shareholders, and does not profit from the enterprise; (3) funds are derived mainly from private and public charity, and are held in trust for the objects and purposes expressed in its charter; (4) charity is dispensed to all who need and apply for it; (5) no obstacles are placed in the way of those seeking the benefits; and (6) the primary use of the property is for charitable purposes. The applicant has failed to present facts sufficient to establish that (1) the benefits derived are for an indefinite number of persons; (4) charity is dispensed to all who need

and apply for it; (5) no obstacles are placed in the way of those seeking the benefits; and (6) the primary use of the property is for charitable purposes, because the applicant has not determined how the building will be used after it is renovated or what the criteria for that use will be. As previously established, the burden of presenting facts sufficient to establish compliance with the aforementioned criteria is on the applicant. I therefore conclude as a matter of law that the applicant failed to establish that it qualified as a charitable organization during the 1994 assessment year.

In the case of People ex rel. Pearsall v. The Catholic Bishop of Chicago, 311 Ill. 11 (1924), the Illinois Supreme Court held that the mere fact that a property was intended to be used for an exempt purpose was not sufficient to exempt said property. The Court required that the actual primary exempt use must have begun for the property to be exempt. In the case of Antioch Missionary Baptist Church v. Rosewell, 119 Ill.App.3d 981 (1983), the Court held that property which was vacant and not used, did not qualify for the statutory exemption as property used exclusively for exempt purposes, regardless of the owner's intent.

In the recent case of Weslin Properties, Inc. v. Department, 157 Ill.App.3rd 580 (2nd Dist. 1987), the Appellate Court held that property which was under development and adaptation for exempt use, qualified for exemption. In that case, Weslin Properties, Inc. purchased a 24.3-acre tract to be developed into an Urgent Care Center, hospital and related medical facilities, on May 26, 1983. During 1984, construction on the Urgent care facility began. During 1983, Weslin Properties, Inc. approved a site plan, and hired an architect. During 1985, the Urgent Care Center was completed and occupied. The Court held that the Urgent Care facility qualified for exemption during 1983, but that the remainder of said parcel did not qualify, as the plans for the remainder of the parcel were not complete and there had not been sufficient adaptation and development for use of the remainder of said parcel during 1983. In this case, although the parcel was acquired on October 23, 1993, as of the

date of the hearing on January 22, 1996, all that had happened was that the building had been stabilized. While the applicant had an estimated cost for renovating the building on this parcel of \$500,000.00, the applicant only has about \$12,000.00 currently available for the project. It should also be noted that while the applicant has prepared and submitted grant and funding applications, to date none of them have been approved or accepted. In addition, at this time the applicant has not determined how this building will be used after the renovation. Consequently, it is impossible to determine whether that use will be charitable or not. It should also be pointed out that in the Weslin case in 1983, financing was available and Weslin had determined how the Urgent Care portion of the property would be used. I therefore conclude that the applicant has failed to establish that this parcel and the building thereon were either in the process of adaptation for charitable use or actually used for charitable purposes during the 1994 assessment year.

It should also be noted that the condition subsequent contained in the deed to the City of Waukegan dated March 16, 1901, is no longer valid in view of 765 **ILCS** 330/4 and 765 **ILCS** 330/5.

I therefore recommend that Lake County Parcel No. 08-21-420-017 be placed back on the tax rolls and assessed to the applicant, the owner thereof, for the 1994 assessment year.

Respectfully Submitted,

George H. Nafziger
Administrative Law Judge
September 12, 1996